

Supreme Court, U.S.
FILED

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JOSEPH F. SPANOL, JR.
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89-1717

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

STATE OF FLORIDA,

Petitioner,

v.

TERRANCE BOSTICK,

Respondent.

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

As stated by the Supreme Court of Florida the question is as follows:

"Does an impermissible seizure result when police mount a drug search on buses during scheduled stops and question boarded passengers without articulable reasons for doing so, thereby obtaining consent to search the passenger's luggage?"

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CONSTITUTIONAL PROVISIONS INVOLVED

Search and Seizures

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution. Article I Section 12, Florida Constitution - 1968 Revision.

Right of Privacy

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be

construed to limit the public's right of access to public records and meetings as provided by law. Article I Section 23, Florida Constitution.

Searches and Seizures

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment IV, United States Constitution.

STATEMENT OF THE CASE

The Respondent, TERRANCE BOSTICK, was a passenger on a bus which was travelling from Miami to Atlanta. Respondent was lying across the back bench sleeping when the bus made a scheduled stop in Fort Lauderdale, Florida.

Two Broward County Sheriff's officers boarded the bus. They carried badges, wore jackets identifying themselves as Sheriff's officers and one carried a pouch which recognizably contained a pistol. They went to where Respondent was lying, stood over him and at least partially blocked the aisle.

Respondent was asked to produce his ticket and identification which were checked and returned to him. The officers explained that they were involved in drug interdiction and requested permission to search Respondent's luggage. Permission was allegedly given to search two bags, one of which did not belong to Respondent.

A search of the bags revealed illegal drugs and Respondent was arrested and charged with trafficking in cocaine.

In the trial Court a motion to suppress the illegal drugs was filed. The trial Court heard testimony and argument and entered its order denying the motion. Respondent entered a plea and reserved his right to appeal the denial of the motion to suppress.

The Fourth District Court of Appeal affirmed the trial Court and certified the issue to the Florida Supreme Court

as being of great public importance, Bostick v. State, 510 So. 2d 321 (Fla. 4th DCA 1987). The Florida Supreme Court quashed the opinion of the Fourth District Court of Appeal and ordered the case remanded for further proceedings consistent with its opinion which found the procedure to be illegal, Bostick v. State, 554 So. 2d 1153 (Fla. 1989).

As noted by the State of Florida in its Petition for Writ of Certiorari this case was not an isolated incident but was one case which came about from a policy of boarding buses and trains of the Broward County Sheriff's Office. This case was chosen as the lead case of six cases presenting a similar issue. There were also numerous other cases on this issue decided by the Fourth District Court of Appeal which were not before the Florida Supreme Court.

SUMMARY OF ARGUMENT

The Florida Supreme Court did not pass upon a question of federal law. It merely passed upon a question of purely state law which, due to the Florida Constitution, is in some instances, equivalent to federal law. The Florida Supreme Court is only bound by decisions of this Court and as there are none on this particular issue it is a state law issue.

Further, the decision invokes the Florida Constitution's right to privacy clause. This is also purely a state matter which this Court has no jurisdiction over.

Both of the grounds are independent and adequate state grounds to support the judgment of the Florida Supreme Court.

ARGUMENT

The State of Florida has requested that this Court accept certiorari in this matter as one which decides an issue of federal law. Respondent cannot agree with that view.

While it is true that the Florida Constitution states that its provision of searches and seizures is to be construed in conformity with the 4th Amendment to the United States Constitution it is only as that provision is interpreted by this Court.

The State of Florida, in its petition, points out conflict with another state court, i.e. State v. Christie, 385 S.E. 2d 181 (N.C. 1989) and a federal appellate court, i.e. United States v. Blake, 888 F. 2d 795 (11th Cir. 1989). The State does not point to any decision of this Court which permits the procedure followed by the Broward County Sheriff's Office. Until such time as this Court does pass upon this specific issue the Florida Supreme Court should be free to interpret the Florida Constitution in accordance with applicable Florida law and decision of this Court.

It should be noted that in its decision on this matter the Florida Supreme Court, with one exception, cited only to Florida cases or decisions of this Court. That is keeping within the dictate of the Florida Constitution. As such this Court should refuse to exercise jurisdiction as the decision

rests on an independent and adequate state ground, see Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979) and Fox Film Corporation v. Muller, 296 U.S. 207, 56 S. Ct. 183, So. L. Ed. 158 (1935).

Under the Florida Constitution the Florida Supreme Court must consider decisions of this court when deciding search and seizure issues. This does not make the issue one of federal law it merely makes Florida law equivalent to federal law when it is set forth by this Court. Therefore, in this matter the Florida Supreme Court was merely making a ruling on state law and, as has been noted by this Court, "... we have no authority to review state determinations of purely state law." International Longshoreman's Association, AFL-CIO v. Davis, 476 U.S. 360, 106 S. Ct. 1904, 90 L. Ed. 2d 389 (1986).

There is one other matter which this Court should consider and that is the Florida Constitutions guarantee of a right to privacy. While not explicitly cited to by the Florida Supreme Court it was a factor considered in reaching its decision. The Florida Supreme Court state, "(t)he intrusion upon privacy rights caused by the Broward County Policy is too great for a democracy to sustain." Bostick v. State, 554 So. 2d 1153, 1158 (Fla. 1989).

As was stated in Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980), "... by invoking a state

constitutional provision, a state court immunizes its decision from review by this Court." The above quoted passage is a clear invocation of Florida's constitutional provision guaranteeing its citizens right to privacy. As such it is another independent and adequate ground and this Court should not take jurisdiction over this matter.

CONCLUSION

As there exist independent and adequate state grounds to support the judgment of the Florida Supreme Court this Court should deny the petition for writ of certiorari.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed to the Joan Fowler, Assistant Attorney General, Department of Legal Affairs, 111 Georgia Avenue, Room 204, West Palm Beach, Florida 33401, this 10th day of July, 1990.

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